



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWK/159501

PRELIMINARY RECITALS

Pursuant to a petition filed August 01, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Francis Children's Center in regard to Medical Assistance (MA), a telephonic hearing was held on August 19, 2014.

The issue for determination is whether the agency met its burden to show that it correctly seeks to terminate petitioner's participation in the Children's Long Term Support (CLTS) program due to nonresponsiveness to program requirements.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Julia Thoe

St. Francis Children's Center
CLTS Program Manager
6700 N Port Washington Road
Milwaukee, WI 53217

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Washington County.

2. The petitioner receives MA through the CLTS Medicaid Waiver.
3. On July 21, 2014 the agency issued a Notification of Waiver Program Termination stating that petitioner's CLTS eligibility was going to end effective August 2, 2014 with the stated reasons being "non-responsive to requests for monthly direct contacts, last direct contact 3/2014" and "non-responsive to schedule home visits/recertification." Exhibit 1.

DISCUSSION

The CLTS program started on January 1, 2004 after the federal Department of Health and Human Services informed the state department that federal MA funding would no longer be available for in-home autism services. The department drafted and released the Interim Medicaid Home and Community-Based Waivers Manual ("*The Manual*") that became effective with the start of the CLTS program. *The Manual* also covers the Community Integration 1A and 1B programs and the Traumatic Brain Injury Waiver program. It can be found on the internet at <http://www.dhs.wisconsin.gov/bdds/waivermanual/index.htm>.

The issue in this case is that the agency contends that petitioner (by way of his parents) failed to be responsive to the agency's requests for direct contacts, home visits and recertification. According to *The Manual*, conditions for which a CLTS participant may be terminated from the Waiver include when the participant fails to meet post-eligibility program requirements. See *The Manual* at §2.10. *The Manual* also states, "these requirements include meeting the monthly spenddown obligation or making the monthly cost share payment(s)." *Id.* In a hearing concerning the discontinuance of Medical Assistance, the burden of proof is on the agency to establish that it is more likely than not that the recipient's assistance has been correctly discontinued.

The first issue is that the agency has not established by citation to any law or rule that their action is correct. I understand that *The Manual* states that a participant may be terminated when he fails to meet post-eligibility program requirements, however, it has not shown that the post-eligibility requirements include being responsive to the agency for direct contacts, home visits and recertification. That being said, it seems obvious that such participation by a participant (or his parents) in the CLTS would be necessary to establish the ongoing need for the program. However, *The Manual* requires that the agency issue appropriate notices regarding terminations such as this and requires that the notice clearly state the specific regulation supporting the action. *Id.* The notices do not make such reference.

Indeed, *The Manual* states that annual recertification is required to assure the participant's continued eligibility for the waiver program. *Id.* at §7.02. Specifically, *The Manual* discusses the importance of timeliness for that process as follows:

Timeliness of the Recertification and Documentation

Federal standards and state program requirements require that eligibility for all Medicaid waiver program participation be re-established annually, no more than **twelve months** from the initial certification or from the previous recertification. There can be no exceptions made to this requirement. The process assures that the participant continues to be both financially and functionally eligible for the waiver program at the time of recertification. Therefore, the documentation completed to certify continued eligibility must be **current**.

The **individual service plan** must be **complete** and **current** and include **accurate** individual outcome statements. It must contain a complete list of waiver funded and non-waiver funded services/supports; specify both the daily, on-going costs as well as any one-time expenses and include funding source information for each provided service or support. In addition, the completed service plan must document that the participant has been informed of their rights, including their right to choose a preferred living

arrangement or service provider and assure that formal participant rights and responsibilities have been explained as outlined in Appendix M.

The **financial** eligibility documentation must accurately reflect the participant's **current** financial situation and must be completed within twelve months of the initial financial eligibility determination. Thereafter, recertification of financial eligibility must be completed annually, within twelve months of the previous recertification. Completion of the financial eligibility redetermination later than the annual anniversary month of eligibility may result in a loss of waiver funds.

The **functional** eligibility documentation must accurately reflect the participant's **current** functional status. Functional eligibility must be re-determined and documented annually and must occur within twelve months of the initial (or last recertification) eligibility screen. The completion of functional eligibility re-determinations later than every twelve months may result in a loss of waiver funds.

While annual recertification is required, the waiver agency may determine that the recertification month should be changed. Changing the recertification month is permissible but the agency must maintain no more than a twelve-month interval between recertifications to maintain participant eligibility. To change a recertification month the review must be conducted **prior** to the month it is due. For example, the recertification that is due in July may be conducted in the month of March or May, or another month, as long as it occurs **before** the recertification is due.

Changing the recertification month, as in the example described above, moves the annual recertification to the selected earlier month the following year. Local waiver agencies are encouraged to manage their system for meeting annual recertification requirements in a manner so as to have the Medicaid financial review occur in the same month as does the level of care and service plan review.

Id. at §7.03.

Here, the agency argues that the annual recertification was due in July 2014, and there seems to be no dispute about that date. However, the effective end date for petitioner's participation in CLTS was determined to be August 2, 2014. See Exhibit 1. This goes beyond *The Manual's* requirement that eligibility be re-established annually, no more than twelve months from the previous recertification, and that there can be no exceptions made to this requirement. *Id.*

Also contrary to the agency's testimony, the last direct contact with petitioner – at least for a quarterly visit - occurred in April 2014, not March 2014. See Exhibit 5 (case note from 4/29/14). There is no evidence to show that petitioner's grandmother, who participated in the April visit, was not a proper party to that visit. Further, it appears from the agency's case notes that petitioner's mother did attempt to file recertification materials on or about July 30, 2014. The case note states, "Completed recertification paperwork was received in the mail with a note stating that the parent would be willing to have the home visit during the month of August...placed a phone call to the family and left a voice message stating that the receipt of the documents does not stop the termination process. He will be discharged on August 2nd." *Id.*

I fully understand that the agency has been diligent in sending emails and leaving voicemails in attempts to connect with petitioner's parents. A letter was written as well to inform the parents that the recertification was necessary. See Exhibit 2. The agency also apparently went through this same go-round last year at the recertification time in 2013. However, last year, the agency accepted the parents' last minute filing of recertification materials, and allowed his recertification to go forward. This year, his mother explained that the selling of their family business along with the general busy-ness of being a parent did cause her to put some responses to the program on the back burner. Regardless, I find that this last minute effort by the petitioner's parents to file the recertification materials in 2014 falls within the 12

month limit to recertify, or at the very least shows an attempt to be responsive. Having nothing to show that a failure to respond to voicemails or emails over two months (it appears May and June were the two months where no contact was made by the parent to the program) qualifies as a failure to meet post-eligibility program requirements, along with the last minute contact in July, I cannot find that the agency acted correctly to terminate petitioner from the CLTS program.

I remind petitioner's parents to remain up to date with his CLTS contacts to avoid such issues in the future, when the program may have better evidence to justify terminating him from the program.

CONCLUSIONS OF LAW

The agency has not met its burden to show that it correctly seeks to terminate petitioner's participation in the Children's Long Term Support (CLTS) program due to nonresponsiveness to program requirements.

THEREFORE, it is

ORDERED

The matter is remanded to the CLTS agency (here, St. Francis Children's Center) to rescind its termination of petitioner's participation in the CLTS program effective August 2, 2014. This action shall take place within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

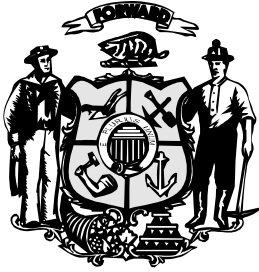
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of October, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 15, 2014.

St. Francis Children's Center
Bureau of Long-Term Support